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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) 2:20-cr-00142-KJN
)
Plaintiff,) STIPULATION AND ORDER TO
) CONTINUE STATUS CONFERENCE AND
v.) EXCLUDE TIME UNDER THE SPEEDY
) TRIAL ACT
MARILOU F. LEWIS,)
)
)
Defendant.) DATE: September 24, 2020
) TIME: 9:30 a.m.
) JUDGE: Hon. Kendall J. Newman
)

This case was previously set for a status conference on September 24, 2020. On March 17, 2020, this Court issued General Order 611, which suspended all jury trials in the Eastern District of California scheduled to commence before May 1, 2020. This General Order was entered to address public health concerns related to COVID-19. On May 13, 2020, this Court issued General Order 618, which extended the suspension of all jury trials until further notice.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive open-endedness

1 with procedural strictness," "demand[ing] on-the-record findings" in a
2 particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006).
3 "[W]ithout on-the-record findings, there can be no exclusion under" §
4 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be
5 harmless. *Id.* at 509; see also *United States v. Ramirez-Cortez*, 213
6 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an
7 ends-of-justice continuance must set forth explicit findings on the
8 record "either orally or in writing").

9 Based on the plain text of the Speedy Trial Act—which *Zedner*
10 emphasizes as both mandatory and inexcusable—General Orders 611, 612,
11 617, and 618 and the subsequent declaration of judicial emergency
12 require specific supplementation. Ends-of-justice continuances are
13 excludable only if "the judge granted such continuance on the basis of
14 his findings that the ends of justice served by taking such action
15 outweigh the best interest of the public and the defendant in a speedy
16 trial." 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is
17 excludable unless "the court sets forth, in the record of the case,
18 either orally or in writing, its reason or finding that the ends of
19 justice served by the granting of such continuance outweigh the best
20 interests of the public and the defendant in a speedy trial." *Id.*

21 The General Orders and declaration of judicial emergency exclude
22 delay in the "ends of justice." 18 U.S.C. § 3161(h)(7) (Local Code
23 T4). Although the Speedy Trial Act does not directly address
24 continuances stemming from pandemics, natural disasters, or other
25 emergencies, this Court has discretion to order a continuance in such
26 circumstances. For example, the Ninth Circuit affirmed a two-week
27 ends-of-justice continuance following Mt. St. Helens' eruption.
28 *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court

1 recognized that the eruption made it impossible for the trial to
 2 proceed. *Id.* at 767-68; see also *United States v. Correa*, 182 F.
 3 Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time
 4 following the September 11, 2001 terrorist attacks and the resultant
 5 public emergency). The coronavirus is posing a similar, albeit more
 6 enduring, barrier to the prompt proceedings mandated by the statutory
 7 rules.

8 In light of the societal context created by the foregoing, this
 9 Court should consider the following case-specific facts in finding
 10 excludable delay appropriate in this particular case under the ends-
 11 of-justice exception, § 3161(h)(7) (Local Code T4).¹ If continued,
 12 this Court should designate a new date for the status conference.
 13 *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting
 14 any pretrial continuance must be "specifically limited in time").
 15

16 STIPULATION

17 The United States of America, by and through its counsel of
 18 record, and defendant, by and through its counsel of record,
 19 stipulate as follows:

20 1. By previous order, this matter was set for status on
 21 September 24, 2020 at 9:00 a.m.

22 2. By this stipulation, the parties now jointly move to
 23 continue the status conference until October 21, 2020 at 9:00 a.m.,
 24 and to exclude time between September 24, 2020 and October 21, 2020,
 25 under Local Code T4.
 26

27
 28 ¹ The parties note that General Order 612 acknowledges that a district
 judge may make "additional findings to support the exclusion" at the
 judge's discretion. General Order 612, ¶ 5 (E.D. Cal. March 18,
 2020).

1 3. The parties agree and stipulate, and request that the Court
2 find the following:

3 a) The government has represented that the discovery
4 associated with this case includes investigative reports and related
5 documents in electronic form. This discovery has been either produced
6 directly to counsel and/or made available for inspection and copying.

7 b) The government has represented that video of the
8 incident is forthcoming.

9 c) Counsel for defendant desires additional time as new
10 Certified Law Students have joined the trial team as of September 1,
11 2020, and as such need additional time to prepare this case for
12 trial, including reviewing discovery and the history of this case,
13 interviewing witnesses, and meeting with the client.

14 d) Counsel for both parties believe that failure to grant
15 the above-requested continuance would deny them the reasonable time
16 necessary for effective preparation, taking into account the exercise
17 of due diligence.

18 e) In addition to the public health concerns cited by
19 General Order 611 and presented by the evolving COVID-19 pandemic, an
20 ends-of-justice delay is particularly apt in this case because
21 Counsel or other relevant individuals have been encouraged to
22 telework and minimize personal contact to the greatest extent
23 possible.

24 f) Based on the above-stated findings, the ends of justice
25 served by continuing the case as requested outweigh the interest of
26 the public and the defendant in a trial within the original date
27 prescribed by the Speedy Trial Act.

28 g) For the purpose of computing time under the Speedy Trial
Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the

1 time period of September 24, 2020 to October 21, 2020, inclusive, is
2 deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), (B)(iv)
3 [reasonable time to prepare] because it results from a continuance
4 granted by the Court at defendant's request on the basis of the
5 Court's finding that the ends of justice served by taking such action
6 outweigh the best interest of the public and the defendant in a
7 speedy trial.

8 4. Nothing in this stipulation and order shall preclude a
9 finding that other provisions of the Speedy Trial Act dictate that
10 additional time periods are excludable from the period within which a
11 trial must commence.

12 IT IS SO STIPULATED.

13
14 DATED: September 22, 2020 MCGREGOR W. SCOTT
15 United States Attorney

16 By: /s/ Alstyn Bennett
17 ALSTYN BENNETT
18 Special Assistant U.S. Attorney

19 /s/ Linda Allison
20 LINDA ALLISON
21 Assistant Federal Defender
22 Counsel for Defendant
(Per 9/22/2020 email authorization from
23 Linda Allison)

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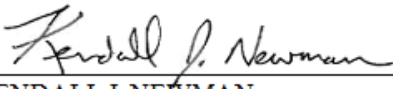
FINDINGS AND ORDER

IT IS SO ORDERED, that the status conference is continued to October 21, 2020, at 9:00 a.m., as set forth above.

The Court has considered all of the factors listed above and specifically finds that the ends of justice outweigh the best interests of the public and the defendant in a speedy trial. The Court orders that time under the Speedy Trial Act shall be excluded from September 24, 2020, to October 21, 2020, under Local Code T4.

FOUND AND ORDERED.

Dated: September 23, 2020


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE